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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/472,134	12/23/99	GIROUARD	B PM-265136

PM82/0622  
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EXAMINER

BOEHLER, A

ART UNIT  PAPER NUMBER

3618

DATE MAILED: 06/22/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No. <b>09/472,134</b>	Applicant(s) <b>Girouard et al.</b>
Examiner <b>Anne Marie Boehler</b>	Art Unit <b>3618</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on \_\_\_\_\_

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-49, 55, 57-61, 64-68, 73, and 76-83 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-49, 55, 57-61, 64-68, 73, and 76-83 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

15)  Notice of References Cited (PTO-892) 18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20)  Other: \_\_\_\_\_

Application/Control Number: 09/472,134

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1. The following Office Action is in response to a telephone interview with applicant's representative, Paul Bowen, on June 7, 2001, to correct deficiencies in the Office Action of May 22, 2001.

2. The drawings are objected to because Figure 4 appears to show a position of the handlebar that is inconsistent with the snowmobile position shown in figures 2 and 3. In Figure 2, for example, the steering handlebars are shown so far forward that they almost touch the windshield. It would be impossible for the handlebars shown in Figure 2 to reach the 90 degree turn angle shown in Figure 4 because there is insufficient space behind the windshield. Correction is required.

Proposed drawing changes have been approved, however, even as amended, the drawings do not show the handlebars in a position which would allow any substantial amount of movement, as would be required to steer the vehicle.

3. Claims 1-49, 55, 57-61, 64-68, 73, 76-83 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant fails to show an operative embodiment of the invention. The only drawings of applicant's invention are Figures 2 and 3, which show the snowmobile with a rider in the prior art position and in the position he would assume if riding on applicant's snowmobile. The difference between the two snowmobiles (the prior art one and that of applicant) is the position of the

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handlebars. However, the positioning of the handlebar in Figures 2 and 3 would not allow any significant steering of the vehicle. Therefore, applicant's invention, as disclosed, is inoperative.

4. Claims 1-49, 55, 57, 58, 61, 64-68, 73, and 76-83 are rejected under 35 U.S.C. 101

because the claimed invention is directed to non-statutory subject matter.

Applicant improperly defines his invention with respect to a rider's body. In many of the claims (for example, claims 1-39 and 61), applicant defines the invention with respect to the rider's center of gravity. However, the rider himself (and his body parts and center of gravity) are not statutory subject matter that may define a patentable claim. Also, every rider is different, even if he were to generally conform to the dimensions of a standard rider provided by applicant, so it would be impossible to determine the scope of the claim based on a rider.

Applicant uses terms such as "seat position", "steering position", and "footrest position" which are improperly defined in relation to the human body as well. For example, applicant explains, on page 9, line 9-15, that "the rider will be positioned on seat 128 so that he occupies seat position 130". The seat has a longitudinally elongated support surface, as seen in the drawings (fig. 2, for example) which could define a number of seat positions. Therefore, applicant has defined his "seat position" based on a "standard person" sitting a few seconds after starting the vehicle, heading straight ahead on flat terrain. The actual "seat position" is defined by a line from the rider's shoulder to hip at its intersection point with the seat while the rider is compressing the cushioning of the seat. Therefore, the "seat position" is defined by the user, his weight and measurements at any given time, and where he chooses to position his body while

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riding the vehicle. This improperly incorporates the user into the claimed combination and is impermissible.

In claim 58, applicant claims to user's head position which, again, is an improper recitation of the rider.

5. Claims 1-49, 55, 57, 58, 61, 64-68, 73 and 76-83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of the claims applicant recites a "standard rider" and a "standard position". However, it is believed that a rider, a human being, cannot be standardized. Also, although applicant has described many dimensions of what he believes to be a standard rider, not every parameter for defining a standard rider is described. For example, applicant has failed to specify the weight of the rider, even though the position of center of gravity of the rider is being claimed. It is not clear how the rider's weight is distributed on his body and how his posture figures into his definition is not clear, etc.

Even if the dimensions of a standard rider were definable, the position a rider on the cycle is dependent on more than simply the dimensions of the rider. The stiffness of the joints, the comfortable posture and the simple preference of the rider factor into their positioning on the cycle. Therefore, applicant's recitation of the vehicle based on the position of the standard rider is believed to be indefinite.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 40, 41, 44-49, 73, 76, and 81-83 are rejected under 35 U.S.C. 102(b) as being anticipated by Yasui.

Yasui shows a snowmobile with a seat position, footrest position and steering position that are illustrated by a rider shown in phantom in Figure 1. In the drawing the angles shown appear to correspond to those being claims, given a rider in the position shown. Sideboards are shown from the side in fig. 1 and in top view on fig. 3. They appear to have a 5 degree downward slope to the front and a wall that inclines upwardly to form a toe-hold, as broadly recited and disclosed.

8. Claim 55 is rejected under 35 U.S.C. 102(b) as being anticipated by Marier.

Marier shows a snowmobile with a frame, an engine 17, skis 22, and a steering shaft 104 connected to a ski 22. A line between the seat position (at the upper portion of the seat that makes contact with the rider) and the steering member intersects a line between the seat position and the top of windshield 25 at an angle of approximately 10 degrees.

9. Claims 59-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirose (USPN 4,699,229).

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Hirose shows a snowmobile, in Figure 7, with a pair of front skis 72 controlled by a steering member 95 and rear drive tracks 79 powered by an engine 94. The engine is positioned forward of the seat 71 and forwardmost track wheel 77 and below the steering member. The majority of the weight of the vehicle is well behind the steering member.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yasui. The rider position shown appears to demonstrate angles of  $\alpha$  being about 98 degrees,  $\beta$  being about 44 degrees and  $\gamma$  being about 37 degrees. However, the angles are directly related to the exact positioning of the rider. The seat and footboards allow for a variety of positions, depending on the comfort and dimensions of the rider. Therefore, it would have been obvious for a rider who is taller than the rider shown to sit farther back on the seat, thereby altering the seat and footrest positions so they correspond to those claimed.

12. Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trautwein (USPN 3,583,507).

Trautwein shows a snowmobile, in Figures 1-4, having a pair of forward skis 5, a rearward track 1, an engine positioned in front of the seat 3 for driving the track, 3 and generally horizontal sideboards 10. The embodiment of Figures 1-4 does not depict toe holds. However, in Figure 7,

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sides of the sideboards extend upwardly from the foot rest portion at the side and in front of and above the toes of the forward rider. It would have been obvious to a skilled artisan to provide the snowmobile of the embodiment of Figure 4 with toe holds, as shown in Figure 7, in order to help hold the forward rider's feet in position.

13. Applicant's arguments filed March 12, 2001 have been fully considered but they are not persuasive.

Applicant argues that claiming the snowmobile in relation to how the standard rider is positioned on it in a standard position is definite and defines over the prior art. The examiner disagrees. The examiner maintains that a rider, a human being, cannot be standardized, no matter how many dimensions are specified, because more factors go into the definition of a rider and the position he would assume on a vehicle than simply his outer dimensions.

Even if a standard rider could be defined, the examiner does not believe that applicant has provided every dimension required to define such a rider. The rider's weight has not been specified and only certain of the rider's height and width dimensions have been provided. It is not clear how agile or flexible the standard rider would be. Age would also factor in his description.

The examiner does not see how exactly the dimensions provided with respect to the rider would be projected onto the vehicle, particularly since the dimensions of the vehicle have been omitted. Generally, the examiner is not able to determine the metes and bounds of the claimed snowmobile. Therefore, the rejections based on 35 USC 112, second paragraph are being maintained.

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Although applicant has described the relationship between the standard rider and the snowmobile in functional terms, the rider is necessary to the definition of the vehicle. Because the rider is necessary to define the invention, the examiner maintains the rider is part of the claimed invention. None of the cases cited indicate that it is proper or permissible to define a claimed apparatus by the position of a rider on it. Therefore, the rejection based on 35 USC 101 is being maintained.

The claims are also rejected under 35 USC 112, first paragraph because the examiner believes that applicant's modification of the steering member position to a location up against the steering wheel is inoperative. Steering is a required function of a snowmobile. Applicants also indicate that this snowmobile is steerable. Also, the steering handle position is a critical element of applicant's invention. Applicant's Figure 3 demonstrates that a main difference between the prior art and the present invention is the forward shift of the steering member position. That is the change that allows the rider to assume the standard position claimed. However, the position of the steering member shown does not allow the vehicle to be steered. Therefore, the vehicle is believed to be inoperative as disclosed.

Applicant argues that Yasui does not meet the claim limitations because the depiction in Figure 1 shows a rider, but the rider shown is not in what applicant has described as his "standard position". The examiner maintains that the recitations of the rider and his position (including his back, arm and leg orientations) on the snowmobile are not properly claimable subject matter. The

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claimed features of the snowmobile itself appear to be shown and it appears to be capable of the intended use recited.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Preble, Boivin, and Grimm show additional snowmobiles.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Boehler number is (703) 308-0422

boehler  
June 19, 2001

*anneBoehler 6/19/01*  
ANNE MARIE BOEHLER  
Primary Examiner